

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:)	
)	
Application for Review of Decision of the)	
Schools and Libraries Division of the Universal)	CC Docket No. 02-6
Service Administrative Company)	
)	
Appeal of Administrator's Decision on Appeal)	
Applicant Name: Tuscola I S D)	
Billed Entity Number: 131141)	
Form 471 Application Number: 473181)	
Funding Request Numbers: 1304067)	
Funding Year: 2005-2006)	

APPEAL OF TUSCOLA INTERMEDIATE SCHOOL DISTRICT

Tuscola Intermediate School District (“Tuscola ISD”), by and through its counsel, Clark Hill PLC, and pursuant to Section 54.719 of the Rules of Federal Communications Commission (“Commission or FCC”), respectfully appeals the above-referenced Administrator’s Decision on Appeal served on Tuscola ISD by the Universal Service Administrative Company (“USAC” or “Administrator”) on October 20, 2005 (“USAC Letter”).¹ In this letter, USAC denied an appeal of Tuscola ISD, in which Tuscola ISD sought a reversal of the Administrator’s denial of \$21,467.28 of eligible discounts because, in the Administrator incorrect view, “the service/product requested is not being used in accordance with program rules.” The Administrator denied the Appeal stating that “program guidelines do not permit funding for requests that include ineligible, non-school entities.”

Tuscola ISD is not requesting Universal Service Fund (“USF”) discounts for ineligible entities, and specifically stated so in an Internet Access Certification Statement, submitted to the

¹ The October 20, 2005 letter is attached hereto as Attachment A.

Administrator on April 28, 2005.² The facts are that Tuscola ISD is part of an Internet consortium. As encouraged by this Commission,³ and codified in its rules,⁴ that consortium includes eligible entities (Tuscola ISD, Cass City Public Schools, Kingston Community Schools and Rawson Memorial Library) and two ineligible entities (Anderson, Tuckey, Barnhardt, Doran CPA Firm and Tuscola County Government).

It was clearly explained in both the Internet Access Certification Statement and in Tuscola ISD's initial appeal to the Administrator, that Tuscola ISD was and is not seeking USF discounts on behalf of, or for the benefit of these ineligible consortium members. However, the Administrator continues to group the non-discounted services provided to the ineligible members of the consortium in with the services eligible for discount to the eligible members of the consortium, and considers all services "service/product[s] requested is not being used in accordance with program rules." The Administrator's findings should thus be overturned.

I. Background and Introduction

On February 16, 2005, Robert J. Frost, Information Systems Coordinator for Tuscola ISD, timely submitted Form 471 Funding Request No. 473181. On this Form, Tuscola ISD submitted \$2,810.59 of monthly charges for Internet connectivity (line 23a) over a 12-month period. Tuscola ISD specifically noted on Form 471 that this amount included \$140.53 per month of ineligible amounts (line 23b) and \$2,670.59 of eligible monthly amounts (line 23c). Applying the 67% discount rate (from block 4 of the form) to the annual eligible amount of

² Attached hereto as Attachment B.

³ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9027-9028, ¶¶ 476-477 (1997).

⁴ 47 C.F.R. § 54.501(d) (2004).

\$32,040.72, Tuscola ISD requested a funding commitment of \$21,467.28. This amount was solely for Internet access to be used by the eligible entities.

This Commission's rules provide that:

For consortia, discounts under this subpart shall apply only to the portion of eligible telecommunications and other supported services used by eligible schools and libraries.

However, because the discount requested is for Internet access, there is no way to measure the exact amount of Internet traffic that will be used by the ineligible entities versus the eligible entities over the next year. Thus, Tuscola ISD chose to calculate this approximation by dividing the total number of Internet accessible computers (each comprising one internet line) at the ineligible sites by the total number of Internet accessible computers at the eligible sites. Such a calculation is consistent with the Administrator's Cost Allocation Guidelines for Consortia Comprising Eligible and Ineligible Entities.⁵

Eligible Entities		Ineligible Entities	
Entity Name	No. of Computers	Entity Name	No. of Computers
Tuscola ISD	390	Anderson, Tuckey, Barnhardt, Doran	20
Cass City Public Schools	540	CPA Firm	
Kingston Community Schools	250	Tuscola County Government	45
Rawson Memorial Library	25		
TOTAL	1205	TOTAL	65

Dividing 65 into 1205 resulted in a preliminary approximation of 5.394% of the computers being ineligible. However, based on the fact that the eligible entities use the Internet

⁵ Cost Allocation Guidelines for Consortia Comprising Eligible and Ineligible Entities – Schools, <http://www.sl.universalservice.org/reference/costaloc.asp> (last visited Dec. 6, 2005).

more heavily than the ineligible entities, which severely restrict the amount and type of Internet use that is allowed by their employees, Tuscola ISD reduced the total monthly charges for the consortium's Internet access by a factor of 5% to achieve the \$2,670.59 figure for eligible monthly amounts submitted on the Funding Request.

II. Tuscola's Internet Access Certification clearly states that non-eligible entities are part of the consortium

Following several conversations with Dipali Parikh of the Administrator's School and Libraries Division ("SLD"), Mr. Frost submitted an Internet Access Certification on April 28,

2005. The Administrator's recommended language for such Internet Access Certifications is:

"The Internet Access service for which I seek discounts will be strictly limited to providing services only at eligible locations and used only by eligible users. Access to the Internet will not be provided to homes or other non-library sites."

However, Tuscola ISD, in the interest of full disclosure and open communications modified this statement to read:

The Internet Access service for which I seek discounts will be strictly limited to providing services only at eligible locations and used only by eligible users. Access to *the discounted portion of* the Internet will not be provided to homes or other non-library sites.

*It is important to note that we do have a non-eligible small business and non-eligible governmental agency connected to our network for Internet purposes. In the application I have listed part of the monthly charges as ineligible to account for the percentage use of the non-eligible entities.*⁶

As noted in this disclosure, if this Commission overturns the Administrator's decision, or had the initial funding request been granted, Tuscola ISD does not intend for any of the USF

⁶ See, Attachment B. The portions added by Tuscola ISD are in italics.

discount to apply to that portion of the Internet access used by or paid for by the ineligible members of its consortium.

III. The Administrator's denial was arbitrary and capricious.

On June 27, 2005, the Administrator denied Tuscola ISD's request for \$21,467.28 of USF discounts for Internet access for Tuscola ISD, Cass City Public Schools, Kingston Community Schools and the Rawson Memorial Library. The sole reason given by the Administrator was "the service/product requested is not being used in accordance with program rules." The denial did not specify with which program rules the request did not comply. Tuscola ISD inquired directly with Ms. Parikah at the SLD to find out why its request had been denied.

Ms. Parikah indicated that although she was not the person responsible for the denial, the request had been denied because the wording on the Internet Access Certification was not exactly as she had specified it should be.

The modifications made by Tuscola to the Internet Access Certification do not substantively change the meaning, spirit or intent of the certification. In fact the changes provide more information than was asked for or necessary to demonstrate that the requested USF discount would only be applied to the eligible portion of the consortium's Internet access. To deny a funding request in response to increased information supporting the request, as the Administrator has done in the instant proceeding, discourages candor and open disclosure on the part of eligible entities applying for USF discounts. Moreover, it elevates form over substance and is otherwise unreasonable

On August 17, 2005, Tuscola ISD appealed the denial to the Administrator. In denying this appeal, the Administrator confirmed that the reason for the initial denial was the modification made to the Internet Access Certification:

Upon review of the appeal letter and supporting documentation, it was determined you modified the Internet Certification to read, "access to the discounted portion of the Internet will not be provided to homes or other non-school or non-library sites." According to your modified statement, ineligible non-school entities are receiving service in connection with the district's network. Program guidelines do not permit funding for requests that include ineligible, non-school entities. Hence, SLD supports PIA's initial decision.

Whether an individual school, school district, or consortia of schools or school districts are eligible for discounts depends on whether the entity meets the statutory definitions as outlined above: The information provided indicates that these entities do not satisfy the definition explained above, therefore, SLD denies your appeal because the entities are not eligible for support.

Despite the fact that the submitted Internet Access Certification makes it clear that the consortium will not be applying the USF discounts received for internet access to the ineligible entities, the Administrator apparently believes that no ineligible entity may be part of a consortium requesting USF funding. To deny the funding request because these same ineligible entities are part of a lawful consortium with eligible entities is arbitrary and capricious and should be reversed by the Commission.

IV. The Commission encourages consortia between eligible and ineligible entities.

This Commission, in establishing the very program rules that the Administrator claims Tuscola ISD's funding request does not follow, stated that

we should encourage schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract competitors and thereby negotiate lower rates or at least secure efficiencies, particularly in lower density regions. We concur with the Joint Board's finding that aggregation into consortia can also promote more efficient shared use of facilities to which each school or library might need access. For example, where five nearby schools might each seek use of a 1.5 Mbps link once a week, it might be more efficient for them to share a single 1.5 Mbps connection to a network server than for each school to purchase its own 1.5 Mbps link.

Thus, we agree with the Joint Board's objectives in recommending that eligible schools and libraries be permitted to aggregate their telecommunications needs with those of both eligible and ineligible entities, including health care providers and commercial banks, because the benefits from such aggregation outweigh the administrative difficulties.⁷

Encouraging consortia between eligible and ineligible entities is also encouraged on the Administrator's web site:

A school or library can apply for discounts on services as part of a consortium with other entities within its community (e.g., with other schools, libraries governmental entities, or health care providers). It may also apply as a part of a consortium with private, for-profit entities. That is, consortia may include both eligible and ineligible entities. Ineligible entities are those members of a consortium that are not entitled to a discount. Entities not eligible for universal service discounts, however, may benefit from lower pre-discount prices from market aggregation. Mixing eligibility will place significant record-keeping responsibility on the consortium. It will be required to demonstrate that only eligible entities receive the discounts. Please note: Applicants filing as consortium with ineligible entities must check a box in Item 5 of the Form 471 Indicating that status.

- Consortia are not required but are encouraged. Consortia advantages are:
- Aggregating demand attracts competitors and facilitates negotiating lower prices.
- Consolidating services achieves improved efficiency.
- Sharing both network infrastructure and knowledge results in lower costs for all.
- Sharing facilities reduces costs.
- Sharing technical staff reduces costs.⁸

Further consortia between eligible and ineligible entities are addressed in the Commission's rules.

⁷ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9027-9028, ¶ 476-477 (1997) (citations and footnotes omitted).

⁸ Program Overview: Who is Eligible? – Schools and Libraries (USAC), <http://www.sl.universalservice.org/overview/eligibility.asp> (last visited Dec. 6, 2005).

(d) Consortia. (1) For purposes of seeking competitive bids for telecommunications services, schools and libraries eligible for support under this subpart may form consortia with other eligible schools and libraries, with health care providers eligible under subpart G, and with public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, when ordering telecommunications and other supported services under this subpart. With one exception, eligible schools and libraries participating in consortia with ineligible private sector members shall not be eligible for discounts for interstate services under this subpart. A consortium may include ineligible private sector entities if the pre-discount prices of any services that such consortium receives from ILECs are generally tariffed rates.

(2) For consortia, discounts under this subpart shall apply only to the portion of eligible telecommunications and other supported services used by eligible schools and libraries.

(3) Service providers shall keep and retain records of rates charged to and discounts allowed for eligible schools and libraries -- on their own or as part of a consortium. Such records shall be available for public inspection.⁹

Thus, the Administrator's rationale for denying the appeal, because ". . . ineligible non-school entities are receiving service in connection with the district's network." conflicts with this Commission's opinions and rules and with the Administrator's own guidelines.

V. Conclusion

Despite the fact that the submitted Internet Access Certification makes it clear that the consortium will not be applying the USF discounts received for internet access to the ineligible entities, the Administrator, in denying the initial funding request and the subsequent appeal, apparently believes that no ineligible entity may be part of a consortium requesting USF funding. Such a holding is directly the opposite of this Commission's rules and policy.

⁹ 47 C.F.R. § 54.501(d) (2004).

Tuscola ISD respectfully requests that this Commission reverse the decision of the Administrator and authorize Tuscola ISD's funding request.

Respectfully Submitted,

CLARK HILL PLC

By: _____

Roderick S. Coy (P12290)
Haran C. Rashes (P54883)
212 East Grand River Avenue
Lansing, Michigan 48906
(517) 318-3100
(517) 318-3099 Fax
E-Mail: rcoy@clarkhill.com
hrashes@clarkhill.com

Date: December 8, 2005

Attorneys for:
Tuscola Intermediate School District

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:)
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Application for Review of Decision of the)
Schools and Libraries Division of the Universal)
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Applicant Name: Tuscola I S D)
Billed Entity Number: 131141)
Form 471 Application Number: 473181)
Funding Request Numbers: 1304067)
Funding Year: 2005-2006)

CC Docket No. 02-6

APPEAL OF TUSCOLA INTERMEDIATE SCHOOL DISTRICT

Attachment A

*Administrator's Decision on Appeal – Funding Year 2005-2006
October 20, 2005*



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

October 20, 2005

Robert J. Frost
Tuscola Intermediate School District
1385 Cleaver Road
Caro, MI 48723

Re: Applicant Name: TUSCOLA I S D
Billed Entity Number: 131141
Form 471 Application Number: 473181
Funding Request Number(s): 1304067
Your Correspondence Dated: August 17, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1304067
Decision on Appeal: Denied
Explanation:

- On your appeal for Tuscola Intermediate School District, you stated the monthly request was reduced to remove the cost of service for two ineligible entities. You state the real reason for the denial was due to modifying the Internet Access Certification during your correspondence with the initial reviewer. It is your belief that the modifications do not change the spirit or intent of the certification statement. The monthly request on the 471 was reduced 5% in order to account for the ineligible portion of the request. You are seeking reversal of the decision to deny FRN 1304067.
- Upon review of the appeal letter and supporting documentation, it was determined you modified the Internet Certification to read, "access to the discounted portion of the Internet will not be provided to homes or other non-school or non-library

sites." According to your modified statement, ineligible non-school entities are receiving service in connection with the district's network. Program guidelines do not permit funding for requests that include ineligible, non-school entities. Hence, SLD supports PIA's initial decision.

- Whether an individual school, school district, or consortia of schools or school districts are eligible for discounts depends on whether the entity meets the statutory definitions as outlined above. The information provided indicates that these entities do not satisfy the definition explained above, therefore, SLD denies your appeal because the entities are not eligible for support.
- Your Form 471 application included costs for the following ineligible entity to receive services: Tuscola County Government and Anderson CPA Firm. FCC rules provide that "[o]nly schools meeting the statutory definitions of "elementary school," as defined in 20 U.S.C. 7801(18), or "secondary school," as defined in 20 U.S.C. 7801(38) . . . shall be eligible for discounts." 47 C.F.R. § 54.501(b)(1). The FCC has defined a "school" as including "individual schools, school districts, and consortia of schools and/or school districts." Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, FCC 97-157, ¶ 425, n.1087 (rel. May 8, 1997). 20 U.S.C. 7801(18) defines an elementary school as "a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law." 20 U.S.C. 7801(38) defines a secondary school as "a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12." 47 C.F.R. § 54.500(c), (k).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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CC Docket No. 02-6

APPEAL OF TUSCOLA INTERMEDIATE SCHOOL DISTRICT

Attachment B

*Internet Access Certification for App # 473181
April 28, 2005*



TUSCOLA TECHNOLOGY CENTER

1401 Cleaver Road, Caro, MI 48723-9379 989-673-5300 Fax 989-673-4228

TO: Dipali Parikh, USAC
FROM: Robert Frost, Information Systems Coordinator
DATE: April 28, 2005
RE: Internet Access Certification for App #473181

The Internet Access service for which I seek discounts will be strictly limited to providing services only at eligible locations and used only by eligible users. Access to **the discounted portion of** the Internet will not be provided to homes or other non-school or non-library sites.

It is important to note that we do have a non-eligible small business and non-eligible governmental agency connected to our network for Internet purposes. In the application I have listed part of the monthly charges as in-eligible to account for the percentage use of the non-eligible entities.

Signed:

Name:

Robert J. Frost

Title:

Information Systems Coordinator

Date:

4-28-2005

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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Form 471 Application Number: 473181)	
Funding Request Numbers: 1304067)	
Funding Year: 2005-2006)	

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS:
COUNTY OF INGHAM)

Patricia A. Tooker, being duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on December 8, 2005, a copy of the enclosed Appeal of Tuscola Intermediate School District, in the above-captioned proceeding, was served upon:

Universal Service Administrative Company	Robert J. Frost
Box 125 – Correspondence Unit	Information System Coordinator
80 South Jefferson Road	Tuscola Intermediate School District
Whippany, NJ 07981	1385 Cleaver Road
	Caro, MI 48723

Service was accomplished via first class United States Postal Service mail.

Patricia A. Tooker

Subscribed and sworn to before me
this 8th day of December, 2005.

Haran C. Rashes, Notary Public
Washtenaw County, Michigan
Acting in Ingham County, Michigan
My Commission Expires: September 18, 2007